

REMARKS

This is in response to the non-final Office Action mailed on March 30, 2010. A Petition for a three-month extension of time is filed herewith to extend the deadline for response from June 30, 2010 to September 30, 2010.

In the Office Action, claims 1-18 are rejected. Claims 1 and 17 are amended herein. All amendments are fully supported by the original specification and drawings. No new matter is added. Claims 1-18 are pending in this application. In light of the foregoing amendments and following remarks, Applicants respectfully request advancement of this application to allowance.

Claim Rejections – 35 U.S.C. § 103

A. Claims 1-7 and 9-18

In the Office Action, claims 1-7 and 9-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Elkin (U.S. Patent No. 978,569) in view of Beerend (U.S. Patent No. 3,155,304). Applicants respectfully traverse the rejection and the sufficiency of the rejection is not conceded. However, in an effort to advance this application to allowance, claims 1 and 17 are amended. Reconsideration is requested because the combination of Elkin and Beerend fails to disclose all elements of independent claims 1 and 17.

Claims 1 and 17 are directed to a corrugated or other suitable carton board tray for baking a food product in the tray that includes a rectangular base. The claims recite, in part, “upright sidewalls extending from the base, and a locking assembly.” The corners of the tray are between “(a) the base and the side walls, (b) the base and the end walls, and (c) the side walls and the end walls, and therefore the corners of the baked food product produced in the tray being straight and squared corners.”

Elkin fails to disclose a tray having a rectangular base and upright sidewalls extending from the base, where the sidewalls and base form corners, which produce a baked food product having straight and squared corners. The Office Action asserts at page 2 that wings 6 are equivalent to side walls and end walls, which are “in perpendicular relationship to the base.” Applicants respectfully disagree.

Referring to Figure 5 of Elkin, it can be seen that wings 6 do not extend from a base at all, but rather extend downwardly and outwardly from upper ends of the walls of the central

portion 7. Moreover, wings 6 are not perpendicular to the base. Elkin states at page 1, lines 93-102:

The outside of the dish is formed by wings 6. These wings are arranged to flare, as better shown in the sectional views so that the central portion 7 is supported by their edge. This accomplishes the double purpose of preventing the dish or box from tipping over, and also permits the telescoping of them for packing, so that a considerable number can be packed in a small space.

Therefore, Elkin fails to disclose or suggest a tray as recited in claims 1 and 17.

Applicants note that Elkins' central portion 7 is also not equivalent to the side walls recited in claims 1 and 17. As shown in Figure 5, the central portions 7 extend upwardly and outwardly from the base of the dish. The central portions 7 are not perpendicular to the base and the corners of the dish are not straight and squared to form a baked food product with straight and squared corners, as recited in claims 1 and 17.

The telescoping of the dish of Figure 5 of Elkin is possible because of the combination of the outwardly and downwardly flared wings 6 and the upwardly and outwardly extending walls that form the central portion 7 of the Figure 5 dish. Thus, Elkin teaches away from the subject-matter of claims 1 and 17. The tray according to claims 1 and 17 teaches the importance of upright side walls and straight and squared corners. Once the side walls are in an upright position and the corners are straight and squared corners, the side walls of the tray can not be telescoped. Hence, it follows that the dish disclosed in Figure 5 of Elkin is a different construction to the tray defined in claims 1 and 17.

Beerend fails to supply the deficiencies of Elkin, with respect to claims 1 and 17, as neither reference discloses or suggests the tray recited in claims 1 and 17 respectively, whether the references are considered individually or in combination.

Regarding claim 2, it is stated in the Action that the side walls of Elkin's container are capable of bending to form a generally concave side wall. Applicants note that Elkin is completely silent about this. Elkin does not use the word "concave" to describe the side walls of the containers. Instead, the side walls of Elkin are straight. It is correct that paperboard is capable of flexing, but the flexing may be both ways, convex or concave. The side walls as defined in claim 2 are inwardly concave and selectively flex outwardly during baking to form

side walls that are perpendicular to the base and to the side walls. This feature is simply not disclosed in Elkin.

Applicants respectfully request reconsideration and allowance of claims 1 and 17, as well as claims 2-7, 9-16 and 18 that ultimately depend from one of claims 1 or 17.

B. Claim 8

In the Office Action, claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elkin in view of Beerend and further in view of Groh (U.S. Patent No. 5,050,766).

Applicants respectfully traverse the rejection and the sufficiency of the rejection is not conceded.

Claim 8 ultimately depend from claim 1 and is allowable for at least the same reason as discussed above. In addition, Groh discloses an ice chest and fails to supply the deficiencies of Elkin in view of Beerend, with respect to claims 1 and 17, as neither reference discloses or suggests the tray recited in claims 1 and 17 respectively, whether the references are considered individually or in combination. Applicants, therefore, request reconsideration and allowance of claim 8.

CONCLUSION

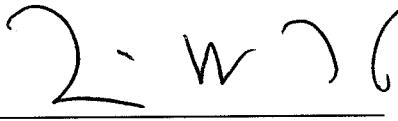
In view of the above amendments and remarks, Applicant respectfully requests a Notice of Allowance. There may be additional reasons that the pending subject matter is patentably distinct from the cited references in addition to those discussed herein. Applicant reserves the right to raise any such arguments in the future. If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Additionally, the Commissioner is hereby authorized to charge any additional fees which may be required for entry of these papers or to credit any overpayment to Deposit Account No. 13-2725.

Respectfully submitted,

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By 

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